



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

December 22, 2003

John Roberts
PO Box 417
Chocorua, NH 03817

**NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 02-039 (WATER DIVISION)**

Dear Mr. Roberts:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 02-039 issued October 17, 2002, the Water Division sought an administrative fine totaling \$2,000 against you for alleged violations of RSA 482-B:5 arising from unauthorized work conducted on property located at the Woodland Toys Store, Route 25, South Tamworth, NH ("the Property"). Pursuant to RSA 482-B:16, II, and based on my review of the evidence presented at the hearing held on this matter on November 10, 2003, I have concluded that a fine of \$2,000, with \$2,000 suspended, is appropriate as set forth below:

- ▶ A fine in the amount of \$2,000 is imposed against you for engaging in the business of well construction without first having obtained a water well contractor license.
- ▶ Of the \$2,000 fine imposed, \$2,000 is suspended conditional on you not committing any violation of any DES-implemented statute or rule for a period of two years from the date of the decision. If you do commit such a violation within two years from the date of this decision, regardless of when the final determination is made that the violation(s) occurred, the suspended \$2,000 shall be due and payable, in addition to any penalties sought for the new violation(s).

RSA 482-B establishes the New Hampshire Water Well Board ("the Board"). The Board is responsible for regulating water well contractors to ensure that the health of the people of New Hampshire, and the state's groundwater resources, are protected. RSA 482-B:5 requires a person to obtain a water well contractor license from the Board prior to engaging in the business of constructing a well.

The record clearly shows that you constructed the well on the Property without a license. However, the original fine recommended by the Division was substantially too high. From the record, you indicated that you are not a licensed water well contractor but the owner of a small excavation company. You testified that you did not believe that you needed a license to replace the clay tiles in the existing well on the Property and you would not have done the work if you knew that a license was required. Thus, I have elected to suspend the fine conditional on you not violating any DES-implemented statute or rule for a period of two years from the date of the decision.

This decision is based on the following findings and conclusions:


1. On May 23, 2002, DES staff observed John E. Roberts digging a shallow dug well at the Woodland Toys Store, located on Route 25, South Tamworth, NH ("the Property").
2. RSA 482-B:5 requires a person to obtain a water well contractor license from the Water Well Board ("the Board") prior to engaging in the business of constructing a well.
3. At the May 23, 2002 inspection, staff informed Mr. Roberts that he was required to be licensed to construct the well.

4. On June 5, 2002, Mr. Roberts filed an application for a water well contractor license with the Board.
5. Subsequently, Mr. Roberts failed to take the scheduled exam on June 13, 2002 and September 12, 2002 after receiving notice from the Board on both occasions.
6. Mr. Roberts violated RSA 482-B:5 by engaging in the business of well construction without first obtaining a water well contractor license.
7. For a violation of RSA 482-B:5, Env-C 616.02(a) authorizes a fine of \$2,000.
8. Under Env-C 601.09(c), the imposed fine must be reduced by 10 percent if the Respondent proves certain mitigating factors by a preponderance of the evidence.
9. None of the factors identified in Env-C 601.09(c)(1) through(4) apply to reduce the amount of the fine that can be imposed for the violation.

You violated RSA 482-B:5 by constructing a well on the Property without first obtaining a water well contractor license. Thus, for the reasons discussed above, I have concluded that the \$2,000 fine imposed, with \$2,000 suspended, is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206.

Very truly yours,


Michael P. Nolin
Commissioner

Enclosure

cc: Water Well Board
Rene Pelletier, Program Manager, Land Resources Management Program
Harrison Mackey, Licensing Coordinator, DES
Anne Edwards, Esq., NHAGO
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